

Williams



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** American Video Channels Inc.

**File:** B-236943

**Date:** January 18, 1990

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### DIGEST

An agency properly rejected a protester's offer for video electronic news-gathering services when protester failed to timely submit a technical proposal in the form of a sample videotape, as required by the solicitation.

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### DECISION

American Video Channels Inc., (AVC) protests the exclusion of its offer from consideration for award under request for proposals (RFP) No. IA2401-S9243656BP issued by the United States Information Agency (USIA). AVC argues that USIA should have waived its failure to submit the technical proposal required by the RFP. We deny the protest.

The solicitation is for a multi-year requirement for video electronic news gathering and production services. Offerors were instructed to submit technical and price proposals by August 28, 1989, at 3 p.m. Section L.6. of the RFP required each offeror to submit as part of its proposal a sample videotape demonstrating the coverage of both "hard" and "soft" news stories. The RFP's section M, "Proposal Evaluation," advised offerors that the offeror's "Technical Proposal (Sample Tape)" and price proposal would be evaluated separately and on an equal basis, and set forth certain specific technical evaluation criteria which would serve as the standards against which proposals would be evaluated and which would "serve to identify the significant matters which offerors should specifically address in their Technical Proposals (Sample Tape)." AVC submitted only a price proposal by the deadline. As a result, USIA informed AVC by letter dated August 30 that its offer would not be considered for award because AVC had not submitted the required technical proposal (sample tape).

By letter dated September 6, AVC filed an agency-level protest arguing that as the incumbent contractor it had

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assumed that "sending a sample tape . . . would be a needless redundancy." However, along with its protest, AVC sent a sample videotape for consideration by the contracting officer. By letter dated September 11, USIA denied the protest, noting that the firm's technical proposal was late and would not be accepted for consideration. This protest followed.

AVC advances a number of reasons why its offer should not have been eliminated from consideration for failure to include a technical proposal: (1) offerors were not given proper and advance notice of the requirement to submit a videotape, which was new to this year's USIA solicitation, as a result of which the requirement was "inadvertently overlooked;" (2) it did submit a sample tape, as an enclosure to its agency-level protest, as soon as possible after being advised that its proposal was being rejected; (3) USIA was familiar with AVC's capabilities because of prior work the firm had done for the agency; and (4) USIA could select from its archives prior productions AVC had supplied and base its evaluation on one or more of those tapes.

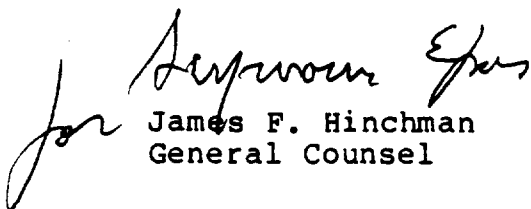
While AVC does not explain what constitutes "proper and advance" notice of the change in this procurement, we do not agree with the protester that USIA was required to give notice--other than that contained in the RFP--that a sample videotape was required under this solicitation. On this basis, we find AVC's allegation that it did not receive notice of this changed requirement unreasonable. See Beretta USA Corp., B-232681, Oct. 26, 1988, 88-2 CPD ¶ 395. Moreover, even if the prior solicitations did not require submission of a sample videotape, the current solicitation clearly did. As we indicated above, the RFP stated in several places that the videotape was to serve as the technical proposal and set forth the criteria that the videotape was to meet.

We also find no merit to the protester's contention that the agency should have accepted the sample tape submitted with its agency-level protest. The solicitation incorporated by reference the standard late proposals clause which permits consideration of a late proposal only under certain limited circumstances which are not applicable here. Consequently, in view of the clear requirement for submission of a sample tape as the technical proposal and AVC's admitted failure to timely comply with this requirement, the contracting officer properly regarded AVC's submission as late. See Silvics, Inc., B-225299, Feb. 24, 1987, 87-1 CPD ¶ 204.

We also do not think that in the absence of a timely submitted technical proposal that the USIA would have been warranted in considering AVC for award based solely on the agency's familiarity with the firm's past performance. the RFP instructed each offeror to submit for evaluation a technical proposal in the form of a "sample" videotape demonstrating the approach the offeror would take to editing and narration, standards of production, and varying on-location conditions including adverse and difficult situations. This is distinguishable, for example, from a solicitation for the supply of manufactured goods, where an agency may waive a requirement for bid samples for a bidder whose product has been or is contracted for or tested by the government and found to meet specification requirements. Federal Acquisition Regulation, § 14.202(4)(f) (FAC 84-53). In the "bid sample" situation, the only question is whether the product will meet the government's minimum specification requirements; the "sample" videotape involves a creative effort which is to be the basis for a comparative evaluation of the merit of competing offers. As such we think it is subject to the principle which we previously have applied to more conventional, written proposals: an incumbent contractor cannot rely on its incumbency--and the contracting agency's familiarity with its prior performance--as a substitute for submitting a technical proposal responsive to the solicitation and which demonstrates compliance with the stated evaluation criteria. See e.g., C.A. Parshall, Inc., B-200334, Feb. 19, 1981, 81-1 CPD ¶ 112.

Finally, AVC suggests that the USIA could base its technical evaluation on one or more tapes in its archives which AVC had previously produced for the agency. We think this unfairly shifts to the contracting agency the burden of selecting and obtaining the materials needed to conduct the technical evaluation, a responsibility which the RFP clearly placed on the offerors. See, e.g., Southeastern Center for Electrical Eng'g Educ., B-230692, July 6, 1988, 88-2 CPD ¶ 13 (contracting agency had no duty to conduct an independent evaluation of "the products of [the protester's] prior contracts on file" with the agency).

The protest is denied.

  
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General Counsel